



Pre-Appeal Brief Request for Review
Attorney Docket No. 062070-0311777
Serial No. 10/082,248

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IPW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: DAVID D. ROWLEY ET AL. Confirmation No.: 1772

Application No.: 10/082,248

Group No.: 2141

Filed: February 26, 2002

Examiner: Kristie D. Shingles

Title: SYSTEM AND METHOD FOR DISTANCE LEARNING

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action ("Final Action") mailed October 19, 2005 and Advisory Action mailed February 7, 2006, Applicant requests review of the final rejection in the above-identified application. This request is being concurrently filed with a Notice of Appeal and a Petition for two month extension of time. The review is requested for the reasons provided in the **Remarks** beginning below. A total of 5 pages are provided.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned for under 37 C.F.R. § 1.136(a), and any fees required therefore (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 033975 (*Ref. No.062070-0311777*).

REMARKS

The Examiner legally erred in rejecting claims 1-26 under 35 U.S.C. §103(a) over Ciarallo and Johnston. Claims 1-26 are patentable for *at least* the reasons that: (1) the Examiner relies on non-analogous art for the rejection of claims 1-26; (2) assuming *arguendo* that the art is deemed analogous, there is no legally proper teaching, suggestion, or motivation to modify Ciarallo to include the teachings of Johnston; and (3) assuming *arguendo* that there was a legally proper teaching, suggestion, or motivation to combine Ciarallo and Johnston, the references, even if combined, fail to disclose, teach, or suggest all of the claim elements.

1. Ciarallo is non-analogous art.

As stated in Applicants' Response to Final filed January 19, 2006, the Final Action fails to establish that Ciarallo is analogous art. First, Ciarallo is not within the field of the inventor's endeavor. Ciarallo relates to a system and method for tracking the progress of students in a course and comparing that progress to the progress of other students in the class. *See* Ciarallo, *e.g.*, col. 1, lines 6-10. This is not the same as the inventor's field of endeavor which relates to providing one or more distance learning courses with respective exercises in an environment where information technology (IT) training courses can be successfully taught by combining virtual machine technology, remote display technology and web technology. *See* Specification, *e.g.*, pg. 2, lines 14-19.

Secondly, Ciarallo is not reasonably pertinent to the particular problem(s) with which Applicants were involved. Ciarallo is more concerned with the problem of distance learning programs inability to simulate a classroom atmosphere where students are motivated by the performance of their peer students. *See* Ciarallo, *e.g.*, col. 1, lines 31-33. The problems addressed by the Applicants included providing one or more IT related courses that are usually not well suited for distance learning environments due to technical implementation issues (solved by using virtual machines).

The Examiner has not established that a person having ordinary skill in the art would reasonably have been expected to solve the problem(s) of providing one or more IT related courses that are usually technically not well suited for distance learning environments, by considering the problem(s)/solution of Johnston. The Final Action is devoid of any evidence to support the Examiner's position.

2. There is no legally proper teaching, suggestion, or motivation to modify Ciarallo to include the teachings of Johnston.

Assuming *arguendo* that Ciarallo is deemed analogous, there is no legally proper teaching, suggestion, or motivation to modify Ciarallo to include the teachings of Johnston. As stated in the Response to Final, in a majority of the embodiments of Ciarallo, a progress over the extended time period of a course is tracked in order to evaluate a student's progress during the span of a course. See *Ciarallo*, e.g., col. 4 lines 16-30. In fact, Johnston teaches away from tracking progress during a course. Johnston states:

This particular arrangement is beneficial in that any changes a student makes to a virtual machine is stored locally on the DLU during the training session but are discarded when the session is over. See Johnston at ¶0046.

Thus, since Johnston discards student's activity after the session is over, this teaches away from tracking student progress during the duration of a course (e.g., semester, quarter long course). For *at least* this reason, neither Ciarallo, Johnston, nor the knowledge generally available to one of ordinary skill in the art, provide a legally proper teaching, suggestion, or motivation to modify Ciarallo to include the teachings of Johnston.

3. Ciarallo and Johnston fail to teach or suggest all of the features of claims 1-26.

Assuming *arguendo* that there was a legally proper teaching, suggestion, or motivation to combine Ciarallo and Johnston, the references, even if combined, fail to disclose, teach, or suggest all of the claim elements. Claim 1 recites, among other things, "receiving a request ...wherein the request includes user information, accessing a *course* database to determine one or more *courses associated with a user*, based on user information, transmitting a *list of courses* associated with the user to the client system...receiving data indicating selection of a *user-selected course from the list of courses*...transmitting a list of exercises associated with the *selected course*." Claims 7, 11, 16, and 21 recite similar features. At least these features are not taught or suggested by Ciarallo and Johnston.

The Advisory Action states that:

Ciarallo et al. clearly teaches students accessing the course database wherein courses for which the students are registered for appear on the course site along with the exercises for the courses, so that the students may complete the course work and transmit it to the student database (col. 4 lines 39-67, col. 7 lines 1-38).

Applicant's arguments are therefore non-persuasive. **See Advisory Action at pg. 2.**

However, Ciarallo does not disclose accessing a course database to determine *courses associated with the user*, transmitting a *list of courses associated with the user*, selection of a *user-selected course from the list of courses*, and transmitting a *list of exercises associated with the selected course*, as claimed. The cited portions of Ciarallo, do not disclose these features. Rather, Ciarallo discloses a student accessing a course site directly using login and password. Ciarallo states:

After the course has been set-up by the school, the student may then access the course site, preferably either from the student's personal home computer or a public computer station, either of which are connected by a communication link 140 to the server 152. Communication software 190 provides restrictive access, for example, allowing only students who are registered in the course to view the course site, and limiting a student to his or her own gradebook. The restrictive access is preferably based upon a login and password, or any of the methods known in the art. **See Ciarallo, e.g., col. 7, lines 23-33.**

Logging into a course site is not the same as presenting a *list of courses*, much less *selecting from the list of courses*. Furthermore, Ciarallo fails to disclose each exercise on the list associated with one or more virtual machines.

The Examiner admits that Ciarallo does not teach the one or more virtual machines. The Examiner attempts to combine Ciarallo with Johnston to make up for these deficiencies. As stated in the Response to Final, the combination of Ciarallo with Johnston (assuming arguendo that the combination is proper) still does not suggest at least the claim feature of "accessing a course database to determine one or more *courses* associated with a user...transmitting a *list of courses* associated with the user to the client system...receiving data indicating selection of a *user-selected course from the list of courses*...transmitting a list of exercises associated with the *selected course*" as recited above. The cited portions of Johnston relate to a distance learning method wherein a user can connect to a web server to perform *an exercise* but does not disclose the above-referenced features, as claimed. Thus, even the combination of Ciarallo with Johnston does not teach and/or suggest all of the features of at least claims 1, 7, 11, 16, and 21. As such, claims 1, 7, 11, 16, and 21 are patentable over Ciarallo with Johnston.

For at least the reasons set forth above, the Examiner has failed to establish a *prima facie* case of obviousness under 35 U.S.C. §103. Accordingly, the rejection of claims 1-26 is improper and should be reversed.

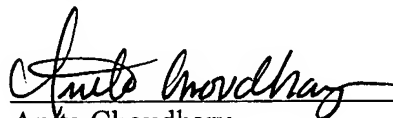
Independent claims 1, 7, 11, 16, and 21 are patentable over Ciarallo in view of Johnston for at least the reasons provided above. Additionally, claims 2-6, 8-10, 12-15, 17-20, and 22-26 depend from and add features to one of the independent claims. As such, these claims are patentable over Ciarallo and Johnston at least due to their dependency and to the addition features they add.

If, for any reason, a personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Dated: March 20, 2006

Respectfully submitted,

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